

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 1998 Session

CYNTHIA RICHARDSON, ET AL. v. JAMES MILLER, M.D., ET AL.

**Appeal from the Circuit Court for Davidson County
No. 94C-1993 Marietta M. Shipley, Judge**

No. M1997-00205-COA-R3-CV - Filed August 16, 2000

BEN H. CANTRELL, P.J., M.S. dissenting.

I concur in Parts IIA, IIB, III, IV and V of the majority opinion. I disagree, however, with the conclusion reached in Part IE. Therefore, I dissent.

Part IE of the opinion contains the conclusion that the trial court erred in granting Dr. Miller's motion in limine to exclude evidence regarding terbutaline's off-label use, including its labeling and the parallel PDR reference. I think this evidence is irrelevant to the issues on which this case was tried, or that were set to be tried when the trial judge granted the motion. As I read them, these issues were (1) that Dr. Miller deviated from the standard of care in using the drug so late in Ms. Richardson's pregnancy, and (2) that Dr. Miller should have discontinued the use of the drug after Ms. Richardson experienced chest pains. The only relevance the label and PDR reference would have is whether the drug should have been used at all. All the experts agreed that the drug is commonly used to prevent or stop premature labor.

Dr. Miller joined issue on the plaintiff's two theories and also contested the theory that the drug in fact caused Ms. Richardson's heart attack. In my opinion these issues fairly went to the jury and the jury returned a verdict for the defendants.

Therefore, I would affirm the verdict.

BEN H. CANTRELL, PRESIDING JUDGE, M.S.

